Watson v. *Jones*, 25 S. E. Rep. 678 (Fla.) ; *Cotzhausen v. Simon*, 47 Wis. 103.

The broader doctrine, according to which the principal case was decided, seems, theoretically and practically, to be sound. If a man is held liable where his acts cause damage as a reasonable and probable consequence, it is just that he should similarly be held liable where his words, through another's acting on them as intended, have the same consequence. A physician cannot rightly be absolved from liability for damage resulting from his negligence, because he advises a certain course of conduct instead of administering medicine or performing an operation. In both cases it is his negligent acts, for words are acts, which cause the damage. And the difficulty of deciding what is negligent statement is no greater than the difficulty, with which juries now successfully contend, of deciding what is negligent conduct. As civilization progresses, every one must depend more and more on the statements of experts. These men should be held to as high a standard of care as bridge-builders, railroad managers, or others whose work consists in acts, as distinguished from words, for on the carefulness of both alike the well-being of the community depends. In England the courts will probably feel bound to follow the dictum in *Peek* v. *Derry*, *supra*, at least until its authority becomes quietly dissipated by not being followed in spirit. But in America, where the question is still practically unsettled, it is to be hoped that the courts will accept the broad doctrine that negligent statements, made with the intention or knowledge that they will be acted upon in matters of importance, cause liability for damage resulting from such action.

THE LIABILITY OF TRUST ESTATES FOR TORTS OF THE TRUSTEE. — An interesting question was presented in a recent case, *Re Raybould*, [1900] 1 Ch. 199. A trustee, while working a colliery for the benefit of the trust estate, caused, without personal negligence on his part, a subsidence of the plaintiff's adjoining property. The plaintiff recovered judgment against the trustee for the damage. It was held that since the trustee was entitled to be indemnified out of the trust estate, the plaintiff could have the benefit of this right and obtain payment of the judgment directly out of the trust estate.

This decision was very severely criticised in a recent number of the Law Times (March 17th, 1900). The decision was said to be based on a subrogation of the plaintiff to the trustee's right to indemnity. Yet the court did not profess to place the decision on that doctrine, and there would not seem to be the slightest element of subrogation involved. The right to be subrogated to a claim exists only where a person in a position analogous to that of surety is compelled either by his obligation or his own interest to satisfy that claim. It is based on a presumed assignment of the claim to him in consequence of his having paid the original claimant, and cannot therefore exist before there is actual payment. So far is the principal case from being one of subrogation that the right here exists before payment by the trustee — had there been payment, no right against the trust estate could arise. The true explanation of the principal case, as well as of the large class of cases holding that where debts are incurred by a trustee authorized to carry on a business for the benefit of the trust estate, creditors can proceed directly against the estate, is that

they are all actions for an equitable execution. The creditor has a claim against the trustee, who in turn has a right of exoneration from any liability incurred by him without fault in managing the estate. This right is not merely one of reimbursement, but the trustee is entitled to apply the income of the trust estate to discharge the claim. There is therefore no reason why the creditor may not, by an equitable execution, apply this right of exoneration to the satisfaction of his own claim. True, no general creditor of the trustee can get at this right of exoneration, but that is owing to its peculiar nature; it is a right against the trust estate solely for the purpose of satisfying that particular claim.

It does not appear in the principal case that the trustee was expressly authorized by the testator to carry on a business for the benefit of the trust estate; but though *Worrall* v. *Harford*, 8 Vesey, 4, which limited the right of recovery to liabilities incurred in such a business, was cited, it is perhaps too much to infer that the court meant to dissent from that and similar decisions. In the United States this limitation has been generally disregarded, and properly, for it is purely arbitrary and at the same time unjust. The principal case is, at all events, a long step towards a consistent doctrine.

RECENT CASES.

AGENCY — INDEPENDENT CONTRACTOR — NEGLIGENCE. — Through the negligence of an independent contractor employed by the defendant to tear down a building, part of a wall fell, damaging the plaintiff's building. *Held*, that the defendant is liable though he used due care in selecting a competent contractor. *Covington Bridge Co.* v. *Steinbrook*, 55 N. E. Rep. 618 (Ohio). See NOTES.

AGENCY — UNDISCLOSED PRINCIPAL — ELECTION. — *Held*, that an unsatisfied judgment against an agent, obtained in ignorance of the existence of his undisclosed principal, is no bar to a subsequent action against the principal. *Brown* v. *Reiman*, 62 N. Y. Supp. 663 (Sup. Ct., App. Div., Fourth Dept.).

There is very little authority on the point in this country. *Beymer* v. *Bonsall*, 79 Pa. St. 298, is probably in accord with the principal case, though the decision is not quite clear. The English courts, however, maintain the opposite view. *Priestley* v. *Fernie*, 3 H. & C. 977. While the present case is clearly correct in holding that the plaintiff could not make an election without knowing of his right against the principal, nevertheless recovery might well have been denied on the ground that the plaintiff's cause of action had become merged in the judgment against the agent. His right is really a single contractual claim on which by an anomaly he is allowed to proceed against either the agent or the principal; but as soon as this claim is turned into a judgment against one, it is gone, and there is no longer any basis for an action against the other. See *Kendall* v. *Hamilton*, 4 App. Cas. 504, 514.

AGENCY — WRONGFUL SALE — INNOCENT PURCHASER. — The plaintiff consigned goods to a retail grocer to sell on commission in the ordinary course of his business. The consignee immediately sold the entire stock for cash to the defendant, who had no notice of the agency. *Held*, that the plaintiff can maintain replevin. *Romeo* v. *Martucci*, 45 Atl. Rep. 1 & 99 (Conn.).

Apparently the precise point here involved has never before been decided, but, on principle, the case can hardly be supported. The court relies upon the well-settled law that a factor cannot pass the title of his principal by a pledge or barter. *Kinder* v. *Shaw*, 2 Mass. 397; *Guneiro* v. *Peile*, 3 B. & Ald. 616. These decisions are, however, based on the fact that such acts are not naturally incident to a power of sale, and hence no authority can be implied. But in the principal case there is no need for an implied authority, since the consignee has an express power to sell. The limitation of this authority to sales at retail should be no more effective against a purchaser ignorant